

Remarks:

Claims 26-29 remain in consideration, with claims 26 and 29 being in independent form. Claims 1-19 and 25 are cancelled and claims 20-24 are withdrawn awaiting rejoinder.

Claim 28 was objected to for allegedly being a substantial duplicate of claim 25. Applicants have cancelled claim 25, and therefore, respectfully assert that this objection has been overcome.

Claims 25-29 were rejected under 35 U.S.C. 112, second paragraph, for allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Specifically, Claims 26 and 29 were rejected for the term “essentially” being unclear and Claim 27 was rejected because it was alleged that it was unclear if the limitation of, “characterized in that the EHV strain is lacking the glycoprotein gM” was characterizing the deposited recombinant BAC of accession No. 01032704 or indicating that the deposited BAC-EHV-1 was further altered by deleting the gM protein. Applicants have amended Claims 26 and 29 by removing the word “essentially.” Additionally, Applicants have amended Claim 27 to recite, “wherein said bacterial artificial chromosome vector as deposited under ECACC accession No. 01032704 further lacks a sequence coding for glycoprotein gM.” Thus, the bacterial artificial chromosome claimed in Claim 27 is identical to the EHV strain deposited under ECACC accession No. 01032704 (claimed in Claim 26) has been modified such that it lacks the glycoprotein gM. Accordingly, Applicants respectfully assert that this rejection has been overcome.

The rejection of claims 25-29 under 35 USC 103(a) was maintained. The claims were alleged to be obvious over McGregor et. al. in view of Neubauer. It was admitted that McGregor did not teach the BAC of Accession No. ECACC 01032704. Additionally, Applicants respectfully assert that Neubauer did not teach the BAC of Accession No. ECACC 01032704. Applicants have amended claims 26, 27 and 28 to specify the BAC of Accession No. ECACC 01032704, thus limiting these claims to this sequence. Claim 29, as previously presented, was already limited to the sequence of Accession No. 01032704. As Accession No. 01032704 was not suggested or taught by the cited references, the combination of Neubauer with McGregor would not have resulted in the claimed invention. Furthermore, the combination of McGregor

and Neubauer would not have provided the requisite reasonable expectation of success needed to sustain a claim of obviousness because McGregor did not teach or suggest that the genome of all EHV-1 viruses could be successfully cloned and expressed. Thus, until Applicants successfully developed the claimed BAC, there would not have been a reasonable expectation of success. This is especially true for claim 28 which requires yet another sequence of a viral, bacterial, or parasitic pathogen. Accordingly, Applicants respectfully assert that this rejection has been overcome.

Applicants note that claims 20-24 were withdrawn awaiting rejoinder. As all claims should be found allowable, Applicants respectfully request such rejoinder at this time.

In view of the forgoing, it is respectfully submitted that all rejections have been overcome and that the claims as they now stand are patentable over the art of record. Accordingly, a Notice of Allowance appears to be in order and such is courteously solicited.

A credit card payment form is included herewith for payment of the extension fee due in connection with this amendment. Any additional fee which is due in connection with this Amendment should be applied against our Deposit Account No. 50-1662.

Respectfully submitted,

By /Tracey Truitt/
Tracey S. Truitt, Reg. No. 43,205
Polsinelli Shalton Flanigan Suelthaus PC
700 W. 47th St., Suite 1000
Kansas City, MO 64112